

UNITED STATES DISTRICT COURT
DISTRICT OF NEW HAMPSHIRE

UNITED STATES OF AMERICA)	
)	
v.)	No. 1:18-cr-192-JL
)	
IMRAN ALRAI)	
_____)	

GOVERNMENT’S MOTION TO MODIFY AMENDED ORDER

The United States of America respectfully moves that the Court modify its Amended Order of September 10, 2021, granting a new trial (ECF No. 268) (the “Amended Order”), to correct a factual misunderstanding: namely, that the prosecutors did not produce until December 2020 the 13 previously undisclosed Meyer-Naviloff emails sent to them prior to trial by expert witness Greg Naviloff. In fact, the record shows that the prosecutors did produce all of the emails and attachments in discovery to the defense in August 2020, following entry of this Court’s Discovery Order of August 10, 2020. *See* Government’s Objection to Defendant’s Motion to Dismiss II, ECF No. 279 at 6-8. In support of its Motion, the government states as follows:

1. The Amended Order states, “While completing the timeline [in December 2020], the prosecution identified and produced more discovery: a set of 18 emails between Naviloff and Meyer, which were in the prosecution’s possession prior to trial but had only been produced in part.” ECF No. 268 at 19. The Amended Order further states that the emails in question were “produced in December 2020.” *Id.*

2. Another part of the Amended Order states that “in June 2020, Alrai requested ‘any reports, emails or other communications’ from Meyer to RSM or Naviloff, and, once again, the prosecution failed to produce the remaining emails. After overlooking the emails at these

junctures, the prosecution finally produced them after another review in December 2020, one year after the trial.” ECF No. 268 at 51.

3. Respectfully, those assertions in the Amended Order are inaccurate and are not supported by the record. As shown in the government’s objection to Alrai’s Motion to Dismiss II (ECF No. 279 at 5-8), on August 17, 2020, the government stated that, consistent with the Court’s 8/10/20 Discovery Order, it would produce, absent any attorney-client privilege issues, any communications between Meyer and Naviloff regarding the IT investigation. ECF No. 160 at 9. Two days later, on August 19, 2020, and in response to the Court’s discovery order of August 10, 2020, UWMB’s attorney John Commisso sent the government a zip folder containing the remaining 16 Meyer-Naviloff emails, three of which he had redacted for privilege. ECF No. 279-1. That same day, the government disclosed these remaining 16 emails with attachments to Alrai. ECF No. 279-2. On August 21, 2020, defense counsel responded to the production with a letter noting that three of the documents were either incomplete or redacted as privileged. ECF No. 279-3. Defense counsel asserted that in their view UWMB had waived any privilege regarding those three documents and asked the government to provide unredacted copies of them. ECF No. 279-3 at 3. After conferring with Commisso, on August 26, 2020, the government disclosed two of the three documents to Alrai in unredacted form. ECF No. 279-4. The government disclosed an unredacted copy of the final document the following day. ECF No. 279-5. Thus, by August 27, 2020, Alrai had received all 18 Meyer-Naviloff emails and attachments in unredacted form, including all of the documents the government did not disclose before trial.

4. In short, the evidence shows that the prosecutors disclosed all of the remaining Meyer-Naviloff emails in August 2020, not December 2020. Accordingly, the government respectfully requests that the Court modify the Amended Order to correct the record.

5. The defendant, through counsel, objects to this motion. According to defense counsel, “the government has contacted counsel for Mr. Alrai, Donna J. Brown, and she objects to this motion on the basis that the defense asserts that the facts set forth in this motion do not fully and fairly describe the relevant facts and circumstances that are the subject of the government’s second motion to modify this Court’s Order.”

Respectfully submitted,

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